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DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

April 3, 2008

Lawrence V. Albert
P.O. Box 200934
Anchorage, Alaska 99520

Dear Mr. Albert:

Thank you for your letter of February 16, 2008 on behalf of Fourth Avenue Gambell Associates (Fourth Avenue). We believe that the State is fairly administering its hazardous substance law in this instance. We can assure you that the State has not ignored Skinner Corporation, Northern Commercial Company, dry cleaning facilities or NC Machinery's past involvement in the site. The State has conducted research into these parties' status and has issued a potential liability determination to Skinner Corporation based upon this research.

With respect to dry cleaning companies that may have operated on the property, research has resulted in no leads as to viable potentially responsible parties. If you have information to the contrary, we would be happy to review it.

As you know, Northern Commercial Company (NCC) is no longer in business. The history surrounding the dissolution of NCC and the transfer of assets is complex. According to certain documents and Skinner Corporation, in May 1979, Fourth Avenue purchased the property from NCC, executing a promissory note for the balance due on the sale. As security, NCC received a deed of trust from Fourth Avenue. In the early 1990's, Fourth Avenue informed NCC of the presence of contamination on the property. It appears that in 1994 NCC changed its name to SC Distribution Co. and months later, SC Distribution Co. adopted a resolution dissolving itself and distributing assets to the sole shareholder and requiring all actions against SC Distribution to be brought in 2 years. In early 2001, there is evidence that SC Distribution Co. assigned the Deed of Trust to Skinner Corporation.

We did not take these facts at face value and further investigation raised a number of questions. For instance, a letter from NC Machinery Company dated March 23, 1977 to The State of Alaska states that Skinner Corporation purchased NCC on December 30, 1976 and is the sole shareholder of record. In addition, the

assignment of the deed of trust by SC Distribution Co. was signed by Paul W. Skinner as President, so he may have been president of SC Distribution and Skinner Corporation at the same time. Also, documents related to the name change from NCC to SC Distribution Co. in 1993 are signed by Skinner Corporation as the sole shareholder of NCC. Additionally, a 2002 release of assignment and security interest document related to Union Bank of California, Skinner Corporation is described as "a Washington corporation, as successor in interest to SC Distribution Co., formerly known as Northern Commercial Company...."

With respect to NC Machinery, research indicates that prior to 1994, NCC's Seattle based industrial arm was NC Machinery/NC Marine. This arm of the company appears to have been sold in 1994, when documents state that a third-generation family owned Tractor & Equipment Co. took the reins at NC Machinery Co. in 1994 and by 2000, the Harnish Group, Inc. owned 100% of the shares.

As I am sure you appreciate, pursuing defunct corporations and/or sales of corporations and seeking to prove corporate successorship is a complex and expensive proposition. In Alaska, the general rule is that when a company sells all of its assets to another, the acquiring corporation is not liable for the debts and liabilities of the selling company. *Savage Arms, Inc. v. Western Auto Supply Co.*, 18 P.3d 49, 55 (Alaska 2001). There are generally four exceptions to this rule: 1) when the purchaser expressly or implicitly agrees to assume the liabilities of the seller; 2) when the asset purchase amounts to a consolidation or a merger; 3) when the purchasing corporation is a mere continuation of the seller; and 4) when the transfer amounts to little more than a sham transaction to avoid liabilities. *Id.* Proving these exceptions requires comprehensive and detailed research, including, in many instances discovery of documents and depositions of corporate officers.

As is often the case with contaminated properties, the entities that may have originally contaminated the property are either insolvent or no longer in existence. This is why state and federal hazardous waste law impose liability on the present owner of the property as opposed to imposing these costs on the public at large. That said, if there are no financially solvent responsible parties, DEC can take action on its own to investigate and cleanup a site utilizing the state oil and hazardous substance release prevention and response fund.

We stand ready to assist in the investigation of these prior owners and operators through the use of authorized DEC's administrative subpoena authority, if necessary. I have enclosed a copy of the relevant research conducted by the

State to date. We, however, look to the current property owner to undertake that the major laboring oar in developing the case against these other parties.

Again, thank you for your letter and if you should have any further questions, please feel free to call at 269-5274.

Sincerely,

TALIS J. COLBERG
ATTORNEY GENERAL

By:

Jennifer A. Currie
Assistant Attorney General

JAC/gyb

Enclosure as stated

cc: Hon. John Harris, Speaker of the House of Representatives (w/o enclosures)
Talis Colberg, Esq., Attorney General (w/o enclosures, by e-mail)